THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY

W.P.No.17835 of 2000

Dt.28-11-2006

Between:

Gujari Hanuman Singh

..Petitioner

and

Cuddapah Municipality rep. by its Commissioner,
and Special Officer, Cuddapah and others.

..Respondents.

THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY

W.P.No.17835 of 2000 &
WPMP No. 18371 of 2006 and WPMP (SR) No.43728 of 2001

Order:

This writ petition was decided in the absence of counsel for the petitioner on 05-12-2000 holding that the relief claimed by the petitioner is misconceived and cannot be entertained in exercise of writ jurisdiction under Article 226 of the Constitution and dismissed the writ petition.

Thereafter, the petitioner filed W.P.M.P.(Sr) No.43728 of 2001 under Order IX Rule 9 CPC to set aside the dismissal order dated 05-12-2000. Since there is a delay in filing the petition to set aside the dismissal order, he filed W.P.M.P.No.18371 of 2006 to condone the delay of 108 days in filing Order IX Rule 9 petition. As the same were returned, which were represented with a prayer to condone the delay 1895 days. This court by order dated 19-10-2006 allowed the said petition on condition of the petitioner depositing a sum of Rs.2,000/- to the credit of Secretary, A.P. High Court Legal Committee, Hyderabad, which has been complied with.

In view of the same, the delay of 108 days in filing the petition under Order IX Rule 9 CPC is condoned. WPMP.No.18371 of 2006 is ordered. Consequently W.P.M.P.(SR) No.43728 of 2001 filed under Order IX Rule 9 CPC to set aside the ex-parte order dated 05-12-2000 is also ordered and writ petition is restored to its file. Heard the learned counsel for the petitioner on the main writ petition.

The present writ petition has been filed by the petitioner seeking a writ of Mandamus directing the respondent No.1 to take immediate action on the application submitted by the petitioner and also to take action pursuant to the previous proceedings by R1—Municipality against R3.

It is stated that the tea stall, which is in occupation of R3, was originally allotted to late Gujari Subbamma before 1977 and she made an application on 03-02-1977 to the respondent No.1 to transfer the stall in the name of the petitioner. Basing upon the said representation R2 passed an order through proceedings D.Dis.No.8559/A1/77 dated 06-09-1977 allotting municipal stall No.189 (New 131) in favour of petitioner by transferring the name of Subbamma and since then he was in possession. In the year 1980 when he was out of town, he requested R3 to look after the business. After his return she refused to handover the shop. Therefore, he reported the matter to R1 to handover the shop by evicting the unauthorized occupant—R3. R1 issued a notice dated 13-09-1998—Ex.P2 to the respondent No.3 asking her to evict from the stall to which she gave reply on 10-10-1980 stating that she is in possession of the stall for the last 32 to 35 years. Respondent No.1 through notice dated 09-12-1990 called upon R3 to produce the record evidencing allotment of shop in her favour. She has not furnished any document but filed O.S.No.331 of 1981 against R1—Municipality, which was dismissed by the trial court directing R1 to use discretion and allot the stall till R3 is evicted under due process of law. Thereafter, R1 issued a notice about consideration of the representation in consultation with the Standing Counsel. Meanwhile, Cuddapah Municipality ordered eviction of R3. Therefore, R3 filed another suit—O.S.No.195 of 1988 and continued under the guise of injunction order granted. But in all the cases i.e. O.S.No.331 of 1981, A.S.No.62 of 1986 and O.S.No.195 of 1988 direction was given

to R1 to use discretion and take appropriate action. In such circumstances, writ petitioner filed O.S.No.651 of 1995 for eviction of R3 and also declaration of his leasehold rights. The said suit was decreed by the trial court. Against which the 3rd respondent carried the matter in appeal—A.S.No.21 of 1998 and the same was also dismissed. Then, she filed S.A.No.926 of 1999 before this court. Basing upon the representation made by the Municipal Standing Counsel the High Court set aside the judgment of the appellate court and allowed the S.A., which necessitated to file the present writ petition.

R3 filed a counter stating that her mother-in-law is the original licensee of the suit schedule premises. Herself and her mother-in-law were selling sundry items like Pasupu, Kumkuma, Nallapoosalu etc. After the death of her mother-in-law she continued the business in the said premises. When the writ petitioner, her eldest son, started harassing she filed O.S.No.337 of 1981 and obtained injunction not to evict her without following due procedure. Against which writ petitioner filed A.S.No.62 of 1986 and the same was dismissed stating that R3 can be evicted by municipality by following due procedure of law. When her possession sought to be interrupted she filed a suit—O.S.No.195 of 1988 for permanent injunction, the same was decreed with a direction to continue her until she has been legally evicted. Thereafter, writ petitioner filed O.S.No.651 of 1995 to declare him as the lessee of the municipality and evict R3 from shop No.189. Then, she filed O.S.No.56 of 1994 for permanent injunction. The trial court decreed the suit filed by the writ petitioner and dismissed the suit filed by her. Aggrieved by the same she carried the matter in A.S.No.21 of 1998 before the District Judge, Cuddapah but unsuccessful. Questioning the same she filed S.A.No.926 of 1999 before this court which was allowed on 18-01-2000 setting aside the finding of the

courts below that the writ petitioner was the licensee of the suit stall No.189 and the suit O.S.No.671 of 1995 filed by the writ petitioner has been dismissed.

Learned counsel for the petitioner would contend that the finding recorded by the High Court in Second Appeal is without due notice to the writ petitioner and this court has not gone into the fresh lease granted in favour of the petitioner on 16-06-1994. In view of the same, the finding is not binding on the petitioner. Therefore, the Municipality is under obligation to determine the leasehold rights of the writ petitioner in the light of the representation made by him.

It is well settled that order passed by the High Court on the original side in exercise of appellate jurisdiction cannot be subject matter of judicial review under Article 226 of the constitution. In view of the same, the submission made by the learned counsel for the petitioner that the finding recorded by the High court in the second appeal is wrong and without notice to the writ petitioner cannot be gone into in the present writ petition. Suffice it to say the writ petitioner has to avail the remedies against the judgment of the Second Appeal, which are not favour to him. When there is a dispute with regard to leasehold rights, succeeded by the petitioner on one side and third respondent on the other, the same has to be resolved before the appropriate civil court in a properly constituted civil suit by impleading all the necessary parties. It is for the Municipality to resolve the said dispute, if permitted, to recognize who is the lessee of the stall succeeded to the leasehold rights and in whose favour it can grant leasehold rights, but no Mandamus as such can be issued preventing the Municipality in granting leasehold rights to the 3rd respondent. In view of the same, unless the petitioner establishes legally enforceable right, no mandamus can be issued either for renewal of the lease or for

due eviction of R3.

The writ petition fails and it is accordingly dismissed. No costs.

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A.GOPAL REDDY, J.

28-11-2006

Murthy